

# Judicial Review and the Indian Constitution

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**Abstract – To safeguard the rights of citizen of India, the judicial review is recognized as necessary and a basic requirement for construction up of a novel civilization, which is based on the perception of public. The power of judicial review is vested with the higher judiciary of states as well as with apex court. In India we follow the doctrine of separation of power as provided under article 50 of the constitution of India. And the principle of check and balance is also present in India, which is furthered by judicial review. Constitution is considered to be living document. There is n number of examples in which this has been used by our apex court to protect citizen from arbitrary action of executive, legislature etc.**

**Keywords: Amendment, Fundamental Rights, Judicial, Legislative, PIL, SIL**

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## INTRODUCTION

Judicial review is power of the courts of law to review the actions taken by the various other organs of the government of India. Judicial review means the power of court to review the legislative and executive actions and determine their validity.<sup>1</sup> In *L. Chandra Kumar v. Union of India*,<sup>2</sup> the Apex Court talked about judicial review in India which consists of three dimension. Firstly, judicial review of legislative actions, secondly, judicial review of judicial decisions and finally, judicial review of administrative actions. This brings the question of statutory construction at the heart of the enquiry. The courts of justice in India are having the power to evaluate the action of legislature and executive. Judicial review on Administrative actions is a process through which the court determines whether the administrative authority has acted according to its power. This power of Judicial Review incorporates the principles of checks and balances and separation of powers as per the spirit of the Indian Constitution. This power of judicial review is provided to only higher courts and not to the lower courts to maintain supremacy of the constitution. The power of Judicial Review on Administrative Actions can be utilized by Supreme Court and High Courts in India through the use of different established procedures such as Writ, PIL etc. Whether it has resulted in effectively checking malpractices of administrative action in all spheres or not is still open to debate. A number of issues have been settled by courts in India but a lot needs to be done. Judicial Review acts as a boon to the depressed and downtrodden and marginalized sections of society with the improvement and empowerment in the era of Globalisation by the way

of invoking the concepts of Public Interest Litigation (PIL) and Social Interest Litigation (SIL) and expanding the horizons of Article 21 with regard to life and personal liberty. It also acts as system of checks and balances on the Legislative as well as Executive actions while maintaining an atmosphere of accountability and transparency. The courts in india is having the power to declare the acts of legislature as ultravires or intravires.

## BEGINNING OF JUDICIAL REVIEW

In India we have borrowed the concept judicial review, as it has been originated in USA in case of *Madbury vs. Madison*. There is no express provision regarding judicial review but it is impliedly exist under article 13 read with article 32 as well as article 226 of constitution. In the constituents assembly there was debate regarding inclusion this American doctrine.

Dr. B.R. Ambedkar said that there is no need of any express provision for this doctrine because it impliedly exist in number of articles for example as it is provided under article 246 of the constitution which talks about the distribution of legislative power between centre and state.

The principle of natural justice which has been universally recognised also talks about judicial review. The rationale behind giving this power to the judiciary is human fallibility that is to say a legislature or executive can commit a mistake which can be corrected by judiciary. These provisions regarding judicial review were added in constitution to prevent authoritarianism and dictatorship.

<sup>1</sup> Aiyar's, P. Ramanatha, "Concise Law Dictionary" Lexis Nexis Butterworth Wadhwa, Nagpur, Edition 4<sup>th</sup>, 2012, Page no. 699.

<sup>2</sup> AIR 1997 SC 1125.

## IMPORTANCE OF JUDICIAL REVIEW

Judicial review is too much important element in constitutionalism. It supports the principle of sovereignty of the Constitution. It keeps the constitution functional and the judicial review is correctional in nature it corrects the misdeed done by the other organs of the government.

According to Justice Syed Shah Mohammad Quadri classified judicial review as – Judicial Review of Constitutional Amendments, Legislation of Parliament/ State Legislature and Administrative action of State

## JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS

The constitution of India itself provides the procedure for the amendment to the constitution. In Article 368, constitution can be amended in three ways:

1. Amendment by the simple majority of the parliament
2. Amendment by special majority of the parliament
3. And the ratification of half of the state legislature by simple majority

In the case of *Shankari Prasad v. Union of India*,<sup>3</sup> the validity of first amendments was challenged and the power of judicial review was used by the supreme court of India and it struck down the various laws regarding land acquisition as they are violative of right to property as provided in article 19 (1A). Similarly the validity of 17<sup>th</sup> amendments was challenged in the case *Sajjan Singh v State of Rajasthan*,<sup>4</sup>. In the case of *Golaknath v. State of Punjab*,<sup>5</sup> the supreme court of india has evolved the theory of prospective overruling by using the power of judicial review and categorically held that the law made by parliament by way of amendment is not an extraordinary law and not a superior law so it is within the purview of power of judicial review.

To nullify the effect of Golaknath judgement the parliament has brought 24<sup>th</sup> amendments in constitution of india. it has brought various changes in article 13<sup>th</sup> as well as 368 of the constitution. The 24<sup>th</sup> amendments was struck down by supreme court in Keswanandran Bharti case.

## BASIC STRUCTURE:

The Supreme Court recognized BASIC STRUCTURE concept for the first time in the historic Kesavananda Bharati case in 1973. The Supreme

Court declared that Article 368 did not enable Parliament to alter the basic structure. This decision is not just a landmark in the evolution of constitutional law, but a turning point in constitutional history.

In *Kesavananda Bharti v. State of Kerala*,<sup>6</sup> landmark of the Supreme Court of India, and is the basis in Indian law for the exercise by the Indian judiciary of the power to judicially review. The Supreme Court has done the balancing between fundamental rights and direct principle of state policy and said that there is no conflict between these two rather they are complimentary to each other.

In *Minerva Mill v. Union of India*,<sup>7</sup> the validity of 42nd amendment Act was challenged. On the ground, these clauses destroyed the essential feature of the basic structure of the constitution. It was ruled by court that a limited amending power itself is a basic feature of the Constitution.

## JUDICIAL REVIEW OF LEGISLATION

Legislature which consists of union legislature that is parliament and state legislature is also not beyond the purview of judicial review. In India there is parliamentary form of government similar to that of UK but the parliament in India does not enjoy the similar power as enjoyed by house of common in UK that is to say the law made by the parliament in India can be declared as ultravires if they are not in consonance with the provision of constitution of India. The Supreme Court in *State of Madras v. Row*,<sup>8</sup> stated that the constitution contains express provisions for judicial review of legislation as to its conformity with the constitution.

## JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

Administrative action is the residuary action which is neither legislative nor judicial. It is concerned with the treatment of a particular situation and is devoid of generality. It has no procedural obligations of collecting evidence and weighing argument. In case of *A.K. Kraipak v. Union of India*, the Court view that in order to determine whether the action of the administrative authority is quasi-judicial, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.

Administrative action having the force of law or devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law,

<sup>3</sup> AIR 1951 SC 458.

<sup>4</sup> (1965) 1 SCR 933.

<sup>5</sup> (1967) 2 SCR 762.

<sup>6</sup> AIR 1973 SC 1461.

<sup>7</sup> (1980) 3 SCC 625.

<sup>8</sup> AIR (1952) SC 196.

but its violation may be visited with disciplinary action. Large administrative action is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable. Grounds for Judicial review of Administrative Actions lies in- Illegality, Irrationality, Procedural, impropriety and Proportionality.

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## CONCLUSION

Judiciary is considered to be protector and guarantor of fundamental rights as well as of constitution of India. In order to perform this task the constitution has conferred the power of judicial review upon Supreme Court and high court. The doctrine of basic structure is also the result of the judicial review. This power also helped in reform in the people of India, various basic rights of individuals are recognised as well as protected by virtue of this power. Many public spirited people has approached Supreme Court by means of public interest litigation and protected the rights of unprivileged section of society. If proper care is taken at the level of making administrative decisions, there will be little scope for grievance and invoking courts' jurisdiction. This will not only reduce the burden on courts but will also create a sense of security and satisfaction in people which is the essence of good governance and foundation of a welfare State.

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